in restraint of interstate commerce,[13] and on a line of reasoning that, since Congress may regulate rates of interstate railroads, it is entitled to have full particulars as to the corporation's assets and liabilities in order that it may properly exercise this function. Also, if the directors acted unconscionably, the corporation's right to recover any profits they thereby realized might be considered an asset.

RETENTION OF JURISDICTION AFTER TERMINATION OF RECEIVERSHIP.—One of the difficulties incident to the concurrent jurisdiction of federal and state courts appeared recently in the case of a federal receivership where the court imposed on the buyer of the property the duty of paying all claims against it, reserving to itself jurisdiction over all such claims. A decision of the Supreme Court now holds that a state court was without power to foreclose to satisfy one of these claims. *Wabash R. R. Co.* v. *Adelbert College*, 208 U. S. 38. This result does not rest on a doctrine of constructive possession of the *res* by the federal court after the sale, nor involve any extension of federal jurisdiction. When a *res* is subject to the concurrent jurisdiction of two courts and one of them takes actual possession, as regards questions involving the possession, it is in effect removed from the territory of the other court.[1] While one court has possession it is no more within the power of the other to determine rights in the *res* than it is within the power of a court of one state to determine interests in land lying in another state. This rule goes to the extent of saying that a sale made by order of the second court would pass no title.[2] But the exclusiveness of control ends when actual possession ends.[3] In the case under discussion the property was subject to several junior mortgages and alleged equitable liens. None of these gave any legal interest in the property; at most they were only rights to be paid out of the proceeds of the property according to priority after judicial sale.[4] When such a sale is made without fraud and under the supervision of the court, for the express purpose of getting the entire proceeds of the property so as to pay off the claims, these equitable rights in the property are exhausted and holders have left their claims as creditors against the proceeds. This is true whether they were parties to the foreclosure or not, for the court can compel the appearance of all who claim an interest in the property,[5] and if they cannot be found, can adjudicate their rights after service by publication.[6] The result is that the court can sell the property for its full value free from all such equitable liens, and will distribute the proceeds among those entitled. This fund being in the actual possession of the court, no other court can adjudicate claims against it.

The sale, however, need not be for cash, and was not in this case. Part of the consideration may be the assumption by the buyer of the express duty to pay certain claims as their validity is established. This obligation being estimated by the buyer, he may bid in the property for what he will

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[13] Northern Securities Co. *v.* United States, 193 U. S. 197; United States *v.* Joint Traffic Ass'n, 171 U. S. 505.

[1] *In re* Tyler, 149 U. S. 164. See 17 HARV. L. REV. 196; 21 HARV. L. REV. 279.

[2] Wiswall *v.* Sampson, 14 How. (U. S.) 52; Heidritter *v.* Elizabeth Oil Cloth Co., 112 U. S. 294; Walling *v.* Miller, 108 N. Y. 173.

[3] Walker *v.* Flint, 7 Fed. 435; Logan *v.* Greenlaw, 12 Fed. 10.

[4] See Perry *v.* Board of Missions, 102 N. Y. 99; Jones, Liens, § 28.

[5] Farmers' Loan Co. *v.* Houston & T. C. Ry. Co., 44 Fed. 115.

[6] Goodman *v.* Niblack, 102 U. S. 556.

give in addition and bind the property as security for the obligation. But the court holds all the proceeds, both money and obligation, and claimants must come to it if they seek payment.[7] It must be remembered that the buyer is under no obligation except by the terms of the sale and that the property is entirely free from the old liens and subject only to a new one as security for the obligation.

If this analysis is sound, it is apparent that express reservation of jurisdiction, though sweeping in terms, is in fact only an express statement of what is the court's undisputed jurisdiction — control over the proceeds while in its possession. Judgment liens established by state courts before the federal court took possession are *res adjudicata* and, as the court intimates, will be allowed as such by the federal court. The doctrine does not of course limit the jurisdiction of state courts over rights in the property acquired after the sale, or prevent suits in state courts based on legal interests in the property which existed before the court took possession. The federal court can only sell the debtor's property, and if the marshal purports to sell what in fact belonged to another, the buyer can get no title to that portion.[8] The reservation covers only claims against the proceeds as such of the debtor's property. The general doctrine, it may be added, should apply equally when a state court has possession of the proceeds.[9]

THE RELATION OF MISTAKE TO THE PROBLEM OF INTERPRETATION OF WILLS. — A recent decision of the Supreme Court of Illinois offers opportunity for an examination of the relation which mistake should bear to the problem of interpretation of wills. In this case it was held that a devise of the "north half" of a certain quarter section of land, which the testator did not own, was effectual to convey the legal title to the east half. *Felkel* v. *O'Brien*, 83 N. E. 170.[1] Since the statutes require that wills shall be in writing, signed, and attested, it is obvious that the desires of a testator cannot take effect by virtue of those statutes unless the will contains a proper written expression of those wishes.[2] It follows that before the work of interpretation can begin, it must first be determined that the testator has used words in some sense other than their direct and primary meaning. The fact that the testator has used words whose primary sense does not convey the concept which extrinsic circumstances prove him to have purposed to convey, is some evidence that the testator has used a language which requires interpretation, but it is not conclusive, for there is always present the possibility of mistake. If one who was accustomed to speak of his one hundred and forty-ninth street house as his forty-ninth street house, should

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[7] Mercantile Trust, etc., Co. *v.* Roanoke & S. Ry. Co., 109 Fed. 3; State Trust Co. *v.* Kansas City, etc., Ry., 110 Fed. 10; Julian *v.* Central Trust Co., 193 U. S. 93. The same rule applies when the buyers assume the liability for torts committed by the receivers. Stewart *v.* Wisconsin Cen. Ry. Co., 117 Fed. 782; Central Trust Co. *v.* St. Louis, A. & T. Ry. Co., 59 Fed. 385; Jesup *v.* Wabash, etc., Ry. Co., 44 Fed. 663.

[8] Campbell *v.* Parker, 59 N. J. Eq. 342.

[9] Hutchinson *v.* Green, 6 Fed. 833.

[1] Whitehouse *v.* Whitehouse, 113 N. W. 759 (Ia.); Patch *v.* White, 117 U. S. 210. *Cf.* Thomson *v.* Thomson, 115 Mo. 56; Lynch *v.* Lynch, 142 Cal. 373; Williams *v.* Williams, 189 Ill. 500. But see Tucker *v.* Seaman's Aid Society, 7 Met. (Mass.) 188.

[2] See Thayer, Prel. Treatise on Evidence, 395; Hawkins, 2 Jurid. Soc. Papers, 298, 302. *Cf.* Gibson *v.* Minet, 1 H. Bl. 569, 614.